IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

Crl.MC.No. 3321 of 2007()

AGAINST THE ORDER DATED 22/10/2007 IN CRMP.2931/07 IN SC.295/2005 of ADDL.SESSIONS COURT (ADHOC)III, TRIVANDRUM
CRIME NO.279/03 OF NEMOM POLICE STATION

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PETITIONER: ACCUSED

SHAJIMON @ SHAJI, S/O.WILSON,
SANTHA NIVAS, NEAR POOZHIKKUNNU KOPRA MILLA,
POOZHIKKUNNU DESOM, NEMOM VILLAGE.

BY ADV. SRI.S.RAJEEV

RESPONDENTS:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM (CRIME NO.279 OF 2003 OF NEMOM
POLICE STATION).

BY P.P. SRI. M.S. BREEZ.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No. 3321 OF 2007

Dated this the 1st day of November, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.302 of the IPC. It is submitted that the case mainly rests on circumstantial evidence. The prosecution has relied on the alleged circumstance of the abscondence by the accused as one circumstance against him. The Investigating Officer - P.W.36, had tendered evidence on this aspect. According to the learned counsel for the petitioner, the counsel who cross-examined had omitted to perceive the importance and significance of the said evidence relating to abscondence and therefore had omitted to put certain relevant and vital questions to the Investigating Officer - P.W.36. When that was realised at the defence stage, an application under Sec.311 of the Cr.P.C. was filed to recall the witness to facilitate cross-examine the said witness on this aspect. That application was dismissed by the impugned order.

2. The learned counsel for the petitioner submits that not

giving permission to recall the witness would result in great prejudice and miscarriage of justice. From the point of view of the counsel who had omitted to cross-examine also, it is necessary that such a further opportunity must be granted. The petitioner is willing to meet the expenses for recalling the witness. The witness is readily available also, submits the learned counsel for the petitioner.

3. Notice was given. The learned Public Prosecutor submits that appropriate orders may be passed.

4. Having considered all the relevant inputs, I am satisfied that the petitioner can be permitted to recall the Investigating Officer – P.W.36, for further cross-examination. The court may specify and the petitioner shall deposit the expenses for recalling the witness on the next date of posting. The petitioner shall thereupon be given an opportunity to cross-examine the said witness.

5. This Crl.M.C. is allowed to the above extent.

Sd/-

(R. BASANT, JUDGE)

Nan/ //true copy// P.S. to Judge